

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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December 6, 2012

The Honorable Rebecca M. Blank
Acting Secretary and Deputy Secretary
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Acting Secretary Blank:

I am writing to request a complete and unredacted copy of the final 2011 'Report and Recommendation of the Special Master Concerning NOAA Enforcement Action of Certain Designated Cases,'¹ as well as the 2012 'Special Master Investigation of NOAA Enforcement Action' report. Both reports are authored by Judge Charles B. Swartwood. As Chairman of the Subcommittee on Investigations and Oversight of the Committee on Science, Space, and Technology, I am concerned that there is a pattern of management issues emerging at NOAA, and I am hopeful that these reports can help to assure me that previous issues I have inquired about are not part of a larger problem.

Second Special Master's Report:

Former Department of Commerce (DOC) Secretary Gary Locke commissioned Judge Swartwood to review certain National Oceanic and Atmospheric Administration (NOAA) fisheries enforcement cases after allegations of systemic law enforcement abuses at the bureau. As part of his task, Judge Swartwood filed periodic reports with the Department to update the Secretary on his progress. According to a February 22, 2012 letter from Judge Swartwood to then-Secretary John Bryson, the final report and recommendations to DOC were expected to be issued in four to six weeks from the date of the letter.²

I understand that part of the reason for the delay in releasing the second Special Master's report is so that you can have adequate time to "review the report and get up to speed on the issues."³ I do not understand the correlation between your needing time to review the report versus releasing it, and I am concerned that further delays in releasing the second report create the appearance that the report contains findings critical of NOAA's enforcement program.

My interest in both of the Special Master's final reports stems from ongoing concerns about NOAA. Of late, it appears that personnel issues at the bureau seem to be commonplace. Yet it is unclear to what extent, or in some cases, if at all, NOAA reprimands its employees. Over the course of the 112th

¹ "Report and Recommendation of the Special Master Concerning NOAA Enforcement Action of Certain Designated Cases," April 2011, available at: <http://www.noaa.gov/lawenforcementupdates/specialmasterreport.pdf>.

² Letter from Judge Charles B. Swartwood, III (ret.), to John Bryson, Secretary of Commerce, February 12, 2012, available at: [http://www.noaa.gov/lawenforcementupdates/Special%20Master%20-%20February%20Status%20Report%20\(2\).pdf](http://www.noaa.gov/lawenforcementupdates/Special%20Master%20-%20February%20Status%20Report%20(2).pdf).

³ Richard Gaines, "Kerry, Brown Press NOAA for Fish Police Report," *Gloucester Times*, July 31, 2012, available at: <http://www.gloucestertimes.com/topstories/x614300915/Kerry-Brown-press-NOAA-for-fish-police-report>.

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Congress, this Committee has reviewed, investigated, and held hearings on several problems involving NOAA and other DOC bureaus. To be fair, some of NOAA's issues - which I have identified below - extend to previous years and predate your tenure at the Department.

As Chairman of the Investigations and Oversight Subcommittee, I am tasked with oversight of federal agencies in the Committee's jurisdiction. This includes ensuring that allegations of waste, fraud, and abuse within the government are appropriately addressed. The second report of the Special Master, which has now been complete for at least eight months, is a critical document for Congress to review -- evidenced in part by the numerous congressional requests that have already been made for its release.⁴ Your long over-due issuance of the final report would positively demonstrate your level of commitment to providing transparency within the DOC.

NOAA Personnel Issues:

National Weather Service

On September 12, 2012, the Subcommittee on Investigations and Oversight held a hearing on financial mismanagement allegations at the National Weather Service (NWS) involving senior NWS employees. An internal NWS investigation and a senior-level NOAA/DOC investigation produced reports with several recommendations on changes in personnel responsibilities to prevent similar issues in the future. Of particular note, the senior level NOAA/DOC review found that "NWS employees engaged in the reprogramming of NWS funds without Congressional notification during the years in question. These actions may be a violation of the Anti-Deficiency Act."⁵ A DOC letter to the Speaker of the House dated November 21, 2012, does in fact confirm violations of the Anti-Deficiency Act (ADA) in fiscal years 2010 and 2011. As a result of these findings, some NWS employees involved in these ADA violations retired, while other NWS employees also responsible for these violations have had corrective actions taken against them. But it is unclear if additional actions will be taken against these, or any other yet-to-be-identified employees, pending further investigation by NWS, NOAA, and DOC.

Undercover Vessel

Last year, the DOC Office of Inspector General (OIG), issued a Report of Investigation on Case Title "Improprieties in Northwest Enforcement Division, Office for Law Enforcement, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Seattle, Washington."⁶ The report investigated circumstances surrounding the 2008 purchase and use of a \$300,000 luxury boat for undercover operations by the Seattle Office of Law Enforcement (OLE). The report was critical of the process leading to the boat's purchase, as well as how it was used by certain NOAA personnel. The OIG referred the case to the US Attorney's Office for the District of Maryland for criminal prosecution. Though the US Attorney's Office declined criminal prosecution, it recommended administrative remedies

⁴ Ibid.

⁵ DOC Under Secretarial Decision Memorandum, "Corrective Actions re: Internal Inquiry into Alleged Mismanagement of Funds Within the National Weather Service," May 24, 2012, available at: http://www.noaa.gov/foia/noaa_useful_websites/052412_lubchenco_decision_memo.pdf.

⁶ Letter from Wade Green, OIG, to Sen. Scott Brown, February 16, 2012, providing documents responsive to Sen. Brown's FOIA request, available at: http://www.scottbrown.senate.gov/public/index.cfm/files/serve?File_id=ece7f72b-bd25-4340-8fcb-49ab1714effa.

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against OLE personnel, including that the government be reimbursed for fuel and time costs associated with inappropriate use of the undercover vessel.⁷

However, it appears that not only did NOAA not take any administrative actions against the personnel identified in the OIG report, but that some may in fact still be employed by the Department.

Document Shredding

In April 2010, the DOC Inspector General wrote a memo to Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator, regarding the destruction of OLE documents during an ongoing OIG review. The memo references an anonymous complaint to the OIG about a November 20, 2009 "shredding party." The memo confirms the involvement of a key employee, who is also identified and implicated in the above-mentioned undercover vessel investigation. Despite recommendations for administrative actions against the individuals identified in the OIG's 2010 memo, it would appear that at least one individual continues to be employed at the Department in a newly created position.

NOAA Magician

In May of this year, NOAA advertised to hire a motivational speaker on "the magic of change"⁸ for a leadership conference. The solicitation sought an individual who had "created a unique model of translating magic and principles of the psychology of magic, magic tools, techniques and experiences into a method of teaching leadership."⁹ Criticisms of this solicitation quickly led to its withdrawal by the bureau. An internal investigation into this matter, prompted in large part by a May 3, 2012 letter from House Science, Space, and Technology Committee Chairman Ralph Hall, concluded that a junior-level employee was responsible for the solicitation. Further, the investigation revealed that NOAA management failed to provide adequate oversight in this situation, which resulted in the placement of the posting in the public domain without undergoing appropriate senior-level checks. This is another example of NOAA's management challenges, particularly since it is unclear whether this sole-source procurement solicitation for a questionable government expenditure resulted in any reprimand or corrective personnel action.

NOAA Staff Travel Records

On April 26, I wrote to Dr. Lubchenco, seeking records related to the travel of NOAA senior leadership. The lack of any reply to that letter prompted me to write again on October 24 and yet again on November 28. The only document I have received from NOAA thus far on my correspondence on this issue is a November 8 acknowledgment letter stating the bureau is "in the process of addressing"¹⁰ my request. I have yet to receive any records responsive to my request, or any discussion about a potential schedule during which a rolling production of documents might be expected. As I stated in my November 28 letter to Dr. Lubchenco, this level of recalcitrance mocks the notion of transparency. As NOAA continues to

⁷ Ibid.

⁸ Charles S. Clark, "NOAA Cancels Solicitation for 'Magic' Motivational Speaker," *Government Executive*, May 3, 2012, available at: <http://www.govexec.com/management/2012/05/noaa-seeks-magician-training-conference/55565/?oref=top-story>.

⁹ Ibid.

¹⁰ Letter from Amanda Greenwell, NOAA Office of Legislative and Intergovernmental Affairs, to Rep. Paul Broun, Chairman of the Investigations and Oversight Subcommittee, November 8, 2012.

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eschew its requirements to comply with Congressional oversight requests, the Committee's concerns are only heightened, and I must ask myself - what is NOAA trying to hide?

These are but a few examples of issues of concern to the Committee relative to NOAA's responses in personnel matters. It is my sincere hope that as the Department overseeing NOAA, your immediate release of both Special Master's reports will not only answer Congress' questions, but also set an example for bureaus within DOC.

Again, I restate my request for complete and unredacted copies of the final 2011 and 2012 reports of the Special Master, along with all unredacted attachments. I ask that you provide me with both these documents by December 21, 2012. Should you have any questions about this request, please feel free to have your staff contact Raj Bharwani with the Investigations and Oversight Subcommittee at (202) 225-6371. Thank you for your prompt attention to this matter.

Sincerely,



Rep. Paul Broun, M.D.
Chairman
Subcommittee on Investigations
and Oversight

cc: Rep. Paul Tonko, Ranking Member, Subcommittee on Investigations and Oversight

Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere and NOAA
Administrator